NO. 84-44

Office-Supreme Court, U.S.
FILED
JUN 22 1984
ALEXANDER L. STEVAS,
CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1983

JOANN SAGONA, INDIVIDUALLY AND FOR ALL OTHERS SIMILARLY SITUATED

Petitioner

VERSUS

AVCO FINANCIAL SERVICES OF LOUISIANA, INC. AND ITS PARENT NOW UNKNOWN AND THEREFORE UNNAMED

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

PATRICK D. BREEDEN, ESQ.
Third Floor, 830 Union Street
New Orleans, Louisiana 70112
504/524-5416

Attorney for Petitioner,
Joann Sagona, Individually
and for all Other Similarly
Situated

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

34 pp
3 questions

QUESTIONS PRESENTED FOR REVIEW

1) Can the Courts ignore specific disclosure requirements as declared by the Federal Reserve Board in Regulation Z of the Truth-in-Lending Act and the Truth-in-Lending Simplification Act.

2) Does a Creditor have to disclose the fact that its loan obligation has a contract provision that the creditor can "demand payment".

TABLE OF CONTENTS

PAGE

Questions Presented for Review i
Table of Contents ii
Table of Authorities iii
Opinions of the Courts Below 1
Jurisdictional Statement 2
Statutes and Regulations Involved 3
Statement of the Case 5
Reasons for Granting the Writ 7
The Decision of the Court Below Conflicts with the Regulation of the Federal Reserve Board Both Under the New and the Old Regulation Z 7
Argument 7
Conclusion 10
Certificate of Service 12
APPENDIX A—Opinion of the United States Court of Appeals for the Fifth Circuit A-1
APPENDIX B—Notice of Denial of Petition for Re-Hearing and Re-Hearing En Banc dated 4/13/84 . . . . . A-4
APPENDIX C—Opinion of the United States District Court for the Eastern District of Louisiana A-6
EXHIBIT 1—Loan Agreement A-8
EXHIBIT 2—Collateral Chattel Mortgage A-9
EXHIBIT 3—Disclosure Statement A-10

TABLE OF AUTHORITIES

CASES **PAGE**

American Express Co. v. Koerner,
352 U.S. 233, 244, 101 S.Ct. 2281, 2287,
68 L.Ed. 803 (1981) 8

Anderson Bros. Ford v. Valencia,
452 U.S. 205, 101 S.Ct. 2266, 68 L.Ed.
783 (1981) 8

Blanchard v. Progressive Bank,
(La. 1st. Cir. 1982) 413 So.2d 589 10

Ford Motor Credit Co. v. Milholin,
444, U.S. 555, 100 S.Ct. 790 63 L.Ed.2d
22 (19890) 8

Mourning v. Family Publication Service,
411 U.S. 356, 93 S.Ct. 1652 36 L.Ed.2d
218 (1973) 8

STATUTES

15 U.S.C.A. 1601 *et seq.* (old act) 3
15 U.S.C.A. 1639 3
15 U.S.C.A. 1640(e) 5
15 U.S.C.A. 1601, *et seq.* (Simplification Act-
new law) 2, 3, 4
15 U.S.C.A. 1638 4
28 U.S.C.A. 1254(1) 2
28 U.S.C.A. 2101(c) 2

REGULATION

Regulation Z-Federal Reserve Board 3, 6, 7, 8
12 CFR 226.1, *et seq.* (old regulation) 3
12 CFR 226.815 . . . . . 3, 6
12 CFR 226.816 . . . . . 7, 8, 9
Regulation Z-Federal Reserve Board 2, 4, 6, 7
12 CFR 226.1 *et seq.* (new regulation) 2, 4
12 CFR 226.18(i) 4, 6, 7
12 CFR 226.18, Comment 18(i) 7
12 CFR 226.17 Comment 17(c) (5)-3 9

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JOANN SAGONA, INDIVIDUALLY AND FOR ALL OTHERS SIMILARLY SITUATED

Petitioner

VERSUS

AVCO FINANCIAL SERVICES OF LOUISIANA, INC. AND ITS PARENT NOW UNKNOWN AND THEREFORE UNNAMED

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Joann Sagona, (Sagona), petitioner, prays that a Writ of Certiorari issue to review that part of the judgment of the United States Court of Appeals for the Fifth Circuit, entered March 1, 1984 affirming the judgment of the United States District Court for the Eastern District of Louisiana entered January 17, 1983.

I.

OPINION OF THE COURTS BELOW

The opinion of the United States Court of Appeals

for the Fifth Circuit to which this petition is addressed is an unreported opinion and appears at page A-1 of the appendix to this petition. The Court of Appeal's order denying Sagona petition for rehearing and petition for rehearing en banc was issued without opinion on April 13, 1984. This petition only addresses issue three in that opinion relative to the fact that hidden in the middle of the collateral chattel mortgage it provided "all future advances shall be payable by the Mortgagor *upon demand of the Mortgagee*" (emphasis added).

The opinion on summary judgment of the United States District Court for the Eastern District of Louisiana that was the subject of Sagona's appeal is also not reported and also appears at page A-6 of the appendices. This petition only addresses issue six as stated in that opinion.

The fact that this petition only concerns the "demand clause" in the mortgage does not mean that the other issues are not important, but the failure of the lower courts to correctly decide the "demand clause" issue is the most important due in part to the future enforcement of the Truth-in-Lending Simplification Act, 15 U.S.C.A. 1601, *et seq.* and the new Regulation Z of the Federal Reserve Board, 12 CFR 226.1 *et seq.*, October 1, 1982 past in furtherance of the Simplification Act.

II.

JURISDICTIONAL STATEMENT

This court has jurisdiction to hear the petition under 28 U.S.C.A. 1254(1) and the petition has been filed within the time required by 28 U.S.C.A. 2101(c).

III.

STATUTES AND REGULATIONS INVOLVED

The petition raises question as to the interpretation of the Federal Truth-in-Lending Act, 15 U.S.C.A. 1601 *et seq.*, P.L. 90-321 (1968) (old law) and the effect that these opinions of the lower courts will have on the Federal Truth-in-Lending Simplification and Reform Act, 15 U.S.C.A. 1601 *et seq.*, P.L. 96-221, Title VI §601, March 31, 1980 effective October 1, 1982 and Regulation Z of the Federal Reserve Board, 12 CFR 226.1 *et seq.* (old Regulation) and the effect that these opinions of the lower courts will have on the new Regulation Z of the Federal Reserve Board effective October 1, 1982.

Specifically the petition urges that the decisions of the courts below have read the following provisions out of the act and regulations entirely.

> 15 U.S.C.A. 1639 (Repealed P.L. 96-221 Title VI §614(d) March 31, 1980, 94 Stat. 180 (old law)).
>
> a) any creditor making a consumer loan or otherwise extending credit...shall disclose each of the following items to the extent applicable.
>
> .....
>
> 6) The number, amount, and due dates or period of payments scheduled to repay the indebtedness.
>
> Regulation Z-Federal Reserve Board (old regulation) 12 CFR 226.815 Disclosure for Demand Loan.

a) Section 226.8(b)(3) requires a creditor to disclose the number, amount and due dates of payments scheduled to repay an extension of credit other than open end and in appropriate cases, the total of payments. The question arises as to how these requirements should be met in the case of demand loans.

.....

c) In order to comply with the requirements of 226.8(b)(3)....Effective May 1, 1970, creditors shall disclose the fact that the obligation is payable on demand.

15 U.S.C.A. 1638 (TIL Simplification Act) P.L. 96-221

Title VI §614(a)-(c), March 31, 1980 94 Stat. 178, 179

a) For each consumer credit transaction other than under open end credit plans, the creditor shall disclose the following items, to the extent applicable:

.....

6) The number, amount, and due date or period of payments scheduled to repay the total of payments.

Regulation Z—Federal Reserve Board (new regulation) effective 10/1/82; 12 CFR 226.18 and 12 CFR 226.18(i)

226.18—Content of Disclosure

For each transaction, the credit shall disclose the following information as applicable:

i) *Demand Feature:* If the obligation has a demand feature, that fact shall be disclosed....

IV.

STATEMENT OF THE CASE

Sagona brought this suit in the United States District Court for the Eastern District of Louisiana alleging that Avco had violated the Truth-in-Lending Act. Original Jurisdiction in the United States District Court was conferred by 15 U.S.C.A. 1640(e).

The facts that gave rise to this lawsuit was that Sagona entered into a loan agreement to secure future advances from defendant, Avco on 6/9/77 at their office located in Louisiana and besides signing a loan agreement with provision for refinancing also signed a collateral chattel mortgage to secure these future advances. At this time she also got a TILA-disclosure statement that disclosed the fact of the collateral chattel mortgage and the fact that she had to make 36 installment payments of $98.00 on the 9th of each month, but no disclosure was made of the "demand feature" of this credit transaction hidden deep in the middle of the collateral chattel mortgage where it stated:

Now in order to secure the repayment of said indebtedness...all future advances shall be payable by Mortgagor *upon demand* of the Mortgagee (emphasis added).

Since this lawsuit was started in June, 1978 there were other issues in this case that was under the old TILA, such as, 1) failure to disclose the security interest of the waiver of the exemption from seizure of one's homestead or the waiver of the exemption from seizure of other personal

property not mortgaged; 2) The false disclosure of the security interest on after acquired property and 3) The incorrect disclosure of the type of security interest obtained, i.e., pledge vs. mortgage.

With the passage of the Simplification Act these issues in the future are not as important as the issue concerning the contract provision that "upon demand" the Mortgagee can require immediate repayment of the obligation.

In this case the contract contained an installment payback schedule and also contained a "payable on demand" provision. The Circuit Court cited the correct part of Regulation Z, 12 CFR 226.815 but then held:

> It is not necessary for Avco to repeat in the disclosure statement everything contained in the note and chattel mortgage....

With this broad statement the circuit court did away with the disclosure required by 12 CFR 226.815 under the old regulation and the disclosure required by 12 CFR 226.18(i) under the new regulation. If that is possible then any other court can do away with any other disclosure required by the act and the regulations of the Federal Reserve Board by stating that it is not necessary to repeat in the disclosure statement everything contained in the note and the mortgage.

In the trial court's opinion it held that since the "payable on demand" clause was in the collateral chattel mortgage and since the collateral chattel mortgage document is an accessory obligation it could not convert an installment note into a "demand note" and therefore the disclosure required by 12 CFR 226.815 were not applicable.

V

REASON FOR GRANTING THE WRIT

The decision of the court below conflicts with the regulations of the Federal Reserve board both under the old and the new Regulation Z that requires a lender to disclose the "payable on demand" feature of a credit transaction.

VI

ARGUMENT

Petitioner, Sagona, has no argument with the Circuit Court's opinion that everything contained in the note and collateral chattel mortgage does not have to be re-stated in the disclosure statement.

Petitioner, Sagona, does have an argument with that statement when it is applied to a required disclosure. Under both the old and the new Regulation Z the Federal Reserve Board made it a required disclosure to disclose a "payable on demand" clause whether same was contained in the note or in the mortgage. See 12 CFR 226.816 (old regulation) and Federal Reserve Board Official Staff Commentary, 12 CFR 226.18, Comment 18(i) (new regulation) which states:

> 2) Covered demand feature. The type of demand feature triggering the disclosure required by 12 CFR 226.18(i), includes only those demand feature contemplated by the parties as part of the legal obligation.

It is respectfully submitted that a demand feature in the collateral chattel mortgage is a demand feature that is part of the legal obligation contemplated by the parties.

Also 12 CFR 226.816 (old regulation) evidences the same type of thinking since in that regulation one sees that the demand feature was in the mortgage. Avco will try to distinguish the two types of mortgages but the essence of both regulations is not the type of mortgage but the fact that the demand feature was in the mortgage and not the note.

This is a perfect example of why the TILA was passed and that was to bring to the attention of borrowers those important credit terms that might be hidden away in the middle of these contracts of adhesion.

It is true that neither the old law or the new law mentioned anything about "demand loan" and the particular disclosure requirements they would require. This court in all of its prior decisions held that the Federal Reserve Board had broad authority in stating what is required to be disclosed. See *Mourning v. Family Publications Service*, 411 U.S. 356, 93 S.Ct. 1652, 36 L.Ed.2d 218 (1973); *Ford Motor Credit Co. v. Milholin*, 444 U.S. 555, 100 S.Ct. 790, 63 L.Ed.2d 22 (1980); *Anderson Bros. Ford v. Valencia*, 452 U.S. 205, 101 S.Ct. 2266, 68 L.Ed.2d 783 (1981).

In *American Express Co. v. Koerner*, 452 U.S. 233, 244, 101 S.Ct. 2281, 2287, 68 L.Ed.2d 803 (1981) this court stated in noted 10:

> ...Regulation Z of the Federal Reserve Board includes detailed rules applying §161(a) and the regulation is entitled to substantial deference (cases cited omitted)

In the case at hand both the trial court and the circuit court ignored the dictates of the regulations of the Federal Reserve Board. Maybe they both hoped that if these opinions were not published no one would find out about them which is next to impossible now with the advent of computers that have a habit of finding all obscure opinions.

In the court of appeal's opinion it only thought of this transaction as being a typical installment loan containing a default-triggered acceleration clause that came into operation upon the occurance of a violation of one of the many contract provisions. It also only saw this type of default accelerating the future installment and that that made this a demand note.

A demand note is one type of a note that can call for acceleration or payment whether any contract provision is violated or not. It is not unusual or impossible to have the legal obligation so written that it can be both an installment payment obligation and a "demand" obligation. See 12 CFR 226.816 (old regulation).

In some Federal National Mortgage Association's mortgages the mortgage contains a seven year demand feature in the twenty year obligation to pay. The old and the new regulations would require the disclosure of this demand feature in the mortgage. See Comment 17(c)(5)-3, FRB.

The fact that the demand feature is contained in the mortgage and not in the note is of little importance since both are part of the legal obligation of the parties.

The fact that the legal obligation between the parties

was both an installment pay back and a demand obligation is an enforceable obligation. See *Blanchard v. Progressive Bank,* (La. 1st Cir. 1982) 413 So.2d 589.

Petitioner, Sagona, does not maintain that the presence of an acceleration clause in the loan agreement converts this obligation to a demand transaction as the Circuit Court stated in its opinion. Petitioner, Sagona, maintains that the following statement in the collateral chattel mortgage to secure future advances that "all future advances shall be payable by the mortgagor *upon demand* of the Mortgagee" is the legal obligation statement that makes this a demand type of transaction that triggered the required demand disclosures referred to above.

VII

CONCLUSION

The law and the regulations of the Federal Reserve Board require that if a transaction has a "demand feature" this "demand feature" must be disclosed even if the "demand feature" of the obligation is contained in the mortgage to secure future advances which under Louisiana law is entitled a Collateral Chattel Mortgage. That the Circuit Court was in error in not finding that the failure of Avco to make this type of a disclosure is a violation of the act and regulations.

This court should grant this writ so that it can correct that error for if this court does not it will call into question whether any of the courts have to enforce the disclosure of any of those things which the Federal Reserve

Board has classified as required disclosures.

Respectfully submitted,

PATRICK D. BREEDEN, ESQ.

CERTIFICATE OF SERVICE

The undersigned counsel for petitioner, has caused service to be made upon counsel of record, J. Glenn Dupre, Addock & Dupre, 821 Main Street, Post Office Drawer, Baton Rouge, Louisiana 70821, 504/383-5276, by placing in the U.S. Mail, first class, postage prepaid, three copies of the within Petition, this _____ day of June, 1984.

_____

PATRICK D. BREEDEN, ESQ.

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 83-3125

JOANN SAGONA, INDIVIDUALLY AND
FOR ALL OTHERS SIMILARLY SITUATED,

Plaintiff-Appellant,

versus

AVCO FINANCIAL SERVICES OF LOUISIANA,
INC. AND ITS PARENT NOW UNKNOWN AND
THEREFORE UNNAMED,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana

(MARCH 1, 1984)

Before CLARK, Chief Judge, POLITZ and JOHNSON, Circuit Judges.

POLITZ, Circuit Judge:

This case presents a classic example of the manner in which the intendment of the Federal Consumer Credit Protection Act, 15 U.S.C. §§ 1601-93, also known as the Truth-in-Lending Act (TILA), and the Federal Reserve Board's

Regulation Z, 12 C.F.R. §§226.1-226.29, can be obfuscated to the point of reconditeness. The purpose of the legislation and regulation is obviously to further enlightenment, not to engender confusion. We approach the resolution of the issues presented on appeal, and review the legal instruments before us, holding that guidon high.

Joann Sagona, individually and on behalf of all others similarly situated, sued Avco Financial Services of Louisiana, Inc., alleging various violations of TILA and Regulation Z. Specifically, Sagona claimed that the disclosure statement provided by Avco at the time she obtained a loan from Avco, secured by a collateral chattel mortgage on certain movable property, was insufficient. The district court found no violations of either the Act or of the Regulation. We affirm.

Facts

On June 9, 1977 Joann Sagona borrowed $2,000 from Avco and executed a loan agreement that provided, *inter alia*, for repayment of the loan in regular installments and acceleration of payment in the event of default by Sagona. To secure the loan, Sagona granted Avco a collateral chattel mortgage on specifically enumerated items of movable household property. In the mortgage, Sagona expressly waived, "as to the debt secured hereby and as to the property herein mortgaged, all personal property exemptions, the homestead exemption, and any and all exemptions permitted by the law to be waived." The mortgage also provided for its own extension to cover subsequently acquired property akin to that listed in the body of the instrument. The mortgage was properly recorded in Orleans Parish, Louisiana.

Amongst its many provisions, AVCO's disclosure statement declared that the collateral chattel mortgage "will secure future or other indebtedness and will cover after-acquired property." It made no mention of the waivers contained in the loan agreement.

Discussion

Sagona assigns four errors to the ruling by the district court. We address each in turn.

* * * * *

3. *A payable on demand clause must be disclosed.*

Sagona's loan was a typical installment loan containing a default-triggered acceleration clause. Upon the occurrence of any one of the default conditions, the remaining installments could be made due and payable at the option of the holder. Sagona suggests that the presence of this acceleration clause converted her installment note to a demand note and that she was entitled to disclosure of that fact under Regulation Z, 12 C.F.R. §§ 226.8(b)(3), 226.815. We do not agree. It was not necessary for Avco to repeat in the disclosure statement everything contained in the note and chattel mortgage, including the effects of default. Specifically, it was not necessary for Avco to disclose that a default in payment would entitle it to immediate payment of the entire balance due.

* * * * *

Finding no merit in any assignment of error, we AFFIRM the district court in all particulars.

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 83-3125

JOANN SAGONA, Individually and for
all others similarly situated,

Plaintiff-Appellant,

versus

AVCO FINANCIAL SERVICES OF LOUISIANA,
INC., and its parent now unknown and
therefore unnamed,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

(Opinion 03/01/84, 5 Cir., 1984, __ F.2d__)

(APRIL 13, 1984)

Before CLARK, Chief Judge, POLITZ and JOHNSON, Circuit Judges.

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member

of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/S/ Signed

United States Circuit Judge

APPENDIX "C"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CLASS ACTION
NUMBER 78-1796
SECTION L

JOANN SAGONA, Individually and for all others similarly situated,

Plaintiff-Appellant,

versus

AVCO FINANCIAL SERVICES OF LOUISIANA, INC., ET AL

Plaintiff, JoAnn Sagona, obtained a $2,000.00 consumer loan from defendant, Avco Financial Services of Louisiana, Inc. (hereinafter AVCO). In addition to the loan agreement, plaintiff also executed a collateral chattel mortgage in favor of AVCO as security for the loan. In compliance with federal law, AVCO completed a Federal Disclosure Statement.

Plaintiff, individually and for all others similarly situated, brought this suit contending that AVCO violated the Federal Consumer Credit Protection Act, 15 U.S.C.A. §1601 *et seq.*, also known as the Truth-in-Lending Act (hereinafter TILA) and Regulation Z of the Federal Reserve Board (hereinafter FRB), 12 C.F.R.§226.1, *et seq.*, promulgated pursuant to the TILA.

Pursuant to the Court's minute entry of September 21, 1982, plaintiff brings this motion for summary judgment asking this Court to determine whether the documents used by

AVCO violated the Federal Truth-in-Lending Act, 15 U.S.C.A. This motion was submitted to the Court on briefs without oral argument.

Plaintiff's motion alleges the following violations of the

* * * * *

6) Plaintiff contends that: "Defendants failed to disclose the pay on demand requirements stated in the mortgage which disagrees with the schedule of payments stated in the disclosure statement and thereby violates 12 C.F.R. 226.8(b)(3)."

Plaintiff insists that according to the mortgage document, the obligation is payable on demand, and therefore defendant is required to make the special disclosures for demand obligations articulated in Regulation Z §226.815.

A reading of the chattel mortgage document reveals that the obligation is payable in installments becoming due on demand only in the event of a default. Moreover, the mortgage document is an accessory obligation designed to secure the obligations set forth in the loan agreement. It cannot, by itself, convert the agreement between the parties to a demand loan.

Accordingly, since I find the obligation to be payable in installments, disclosure pursuant to Regulation Z §226.815 is not necessary.

EDITOR'S NOTE

PAGES A-8 thru A-10 WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

EXHIBIT 1

LOAN AGREEMENT

...LIED BY THE LOUISIANA CONSUMER CREDIT LAW

...AN AGREEMENT

...RANCH AND BRANCH LOCATION	ACCOUNT NO.	DATE
082	38500343	000241

...DER AVCO FINANCIAL SERVICES OF LOUISIANA, INC.

4141 VETERANS MEMORIAL BL

METAIRIE . LA. 70002

...ROWER: JOANN SACCA

...BORROWER:

...LING ...DRESS 4713 PALMYRA NEW ORLEANS LA 70115

DATE OF AGREEMENT	06/09/77	NUMBER OF PAYMENTS	36
FIRST PAYMENT DUE	07/09/77	MONTHLY PAYMENT AMOUNT — FIRST	$ 98.00
FINAL PAYMENT DUE (MATURITY)	06/09/80	MONTHLY PAYMENT AMOUNT — OTHERS	$ 98.00
ANNUAL PERCENTAGE RATE	31.32 %	AMOUNT FINANCED	$ 2269.60
MAXIMUM LOAN ($ ONLY)	$ 2000 NET	FINANCE CHARGE	$ 1258.40
		TOTAL OF PAYMENTS	$ 3528.00

...yments are due on the same day of each succeeding month, ...ginning with the First Payment Due Date. The final payment, in any case, is equal to the unpaid Amount Financed and accrued charges. EFFECTIVE DATE OF FINANCE CHARGE AND INSURANCE COVERAGE IS DATE FUNDS ARE DISBURSED.

AGREED RATE OF CHARGES: Unless one of the boxes below is checked, the Agreed Rate of Charges is 36% per annum on that part of the unpaid principal ...alance not exceeding $800.00; 27% per annum on that part exceeding $800.00 but not exceeding $2,000.00; 21% per annum on that part exceeding $2,000.00 ...ut not exceeding $3,500.00; and 15% per annum on that part exceeding $3,500.00.

A ☐ If checked here, the Agreed Rate of Charges is 18% per annum on the unpaid balances of the principal.

B ☐ If checked here, the Agreed Rate of Charges is 24% per annum on the unpaid balances of the principal.

LOAN AGREEMENT WITH PROVISIONS FOR REFINANCING (NEGOTIABLE PAPER)

...the basis of the credit application submitted to you, I request the Amount Financed stated above under this Loan Agreement and I understand that any future ...otiated renewal shall be subject to this Loan Agreement and to the following terms and conditions:

Refinancing under this agreement is subject to a new credit verification and approval of my credit by the Lender.

The Total of Payments under this Loan Agreement shall be negotiated for each refinance and, at my request and with Lender's approval, the Maximum Loan Amount may be renegotiated.

Subject to the terms of this agreement and the verification and approval of my credit, you will from time to time refinance my obligation, advance money to me in the form of a check(s) payable as I may direct (either orally or in writing) and in such denomination(s) as we may agree upon. The mailing or delivery to me or to any third party as directed by me of any such check(s) shall constitute a refinance in the aggregate amount of such funds plus the unpaid balance less unearned charges of my account hereunder as of the date of refinancing and shall constitute a renewal of this agreement. At Lender's option and with or without notice to me, other disbursements made on my behalf and authorized by me may constitute a like refinancing and a renewal of this agreement.

I promise to pay to you or your Order at the Office designated above or at such other office within the State that I may request or if I move my residence outside of the State, at such other office as may be designated by Lender, the Total of Payments and of each succeeding loan made pursuant to this agreement in consecutive monthly payments, on the dates, in the amounts, for the term and in the manner set forth in the respective Statement of Loans executed in connection with said loans. A Statement of Loan will be mailed or delivered to me covering each loan transaction hereunder and the term and conditions reflected in each succeeding Statement of Loan shall be incorporated herein and the agreement shall be amended with respect to said terms and conditions. I further agree that the final payment due under any loan made pursuant to this agreement shall be an amount necessary to fully repay my indebtedness to you on the scheduled maturity date, and accordingly, the final payment may be larger or smaller than the monthly payment amount set forth in the respective Statement of Loans. If any loan hereunder is not paid in full at maturity, the unpaid balance of such loan shall bear interest thereafter at the maximum rate permitted by law.

5. IT IS UNDERSTOOD THAT I MAY, AT ANY TIME, MAKE LARGER PAYMENTS OR PAY THE BALANCE IN FULL WITH ACCRUED DEFAULT CHARGES. In the event of prepayment in full, I will receive the rebate of unearned Finance Charges as shown on the Statement of Loan.

6. If any payment is not paid within ten (10) days after the due date thereof, Lender may assess a delinquency charge in an amount not exceeding $5.00 or 5% of the amount of the payment, whichever is less, or in lieu of the delinquency charge if a payment is not paid within ten (10) days after its due date, the Lender may unilaterally grant a deferral and assess a deferal charge as shown on the Statement of Loan. Borrower agrees to pay reasonable attorneys' fees not to exceed twenty-five percent (25%) of the unpaid balance after default and referral to an attorney by Lender.

7. Borrower and Lender agree that in the event a deferral of all unpaid payments is requested by the Borrower, the Lender may assess a deferral charge in an amount equal to the annual percentage rate stated in the Disclosure Statement given to the Borrower at the time this loan or any renewal thereof was made, on the amount or amounts deferred for the period of deferral calculated without regard to diffsrence in the lengths of the months but proportionately for a part of a month counting each day as 1/30 of a month.

8. If two payments or part thereof are in default for 10 days or more, Lender may elect to convert the loan from a precomputed loan to one in which the loan finance charge is based on unpaid balances. In this event, Lender shall make a rebate of a portion of the finance charges on the same basis as if the loan were prepaid in full as of the maturity date of a delinquent payment, except that no acquisition charge shall be taken, and thereafter will compute finance chages on an interest bearing basis until fully paid, except that in the event the contract is extended beyond one year from its contractual maturity date, the rate of interest will be reduced to 8% per annum.

9. If, in connection with this or any renewal loan made hereunder: (a) a default is made in the payment when due of any payment or any part thereof; (b) a default is made by Borrower under any term or condition contained in this Loan Agreement, in any Collateral Chattel Mortgage or Mortgage given as security hereof; (c) an application is made for the appointment of a Receiver, or an assignment is made for the benefit of creditors, or a Petition is filed in Bankruptcy, or an attachment is issued, or a judgment is entered, or any other legal or equitable proceedings are instituted against any one or more of the undersigned; then, at the option of the Lender and without Notice or Demand, the Unpaid Balance of such loan including accrued charges shall become at once due and payable. Time is of the essence. The acceptance by Lender of any payment after default in the same, shall not be considered a waiver of the right to enforce payment of all subsequent payments when and as the same shall become due, and shall not be considered a waiver of the right to enforce any of the terms or conditions of this agreement or any loan made pursuant hereto.

THE ADDITIONAL TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF ARE PART OF THIS LOAN AGREEMENT.

BORROWER(S) ACKNOWLEDGES RECEIPT OF THE AMOUNT FINANCED AND DIRECTS LENDER TO APPLY SAME AS AUTHORIZED ON THE STATEMENT OF LOAN. BORROWER(S) ALSO ACKNOWLEDGES RECEIPT OF A COPY OF THE STATEMENT OF LOAN AND A COPY OF THE LOAN AGREEMENT.

WITNESS THE HANDS AND SEAL OF THE UNDERSIGNED THE DAY OF THE DATE OF LOAN HEREINABOVE STATED.

JoAnn Sacca
BORROWER

Ne Varietur for identification with an act of collateral chattel mortgage acknowledged before me on 6/9 19 77

By Deborah Hamilton
FOR LENDER (WITNESS TO ALL)

BORROWER

(SEAL)
NOTARY PUBLIC

ADDITIONAL TERMS AND CONDITIONS ON THE REVERSE SIDE

COLLATERAL CHATTEL MORTGAGE

A-9
EXHIBIT 2
COLLATERAL CHATTEL MORTGAGE

BRANCH AND ACCOUNT IDENTIFICATION		ACCOUNT NO.	FILE NO.
Mortgagee	[illegible] FINANCIAL SERVICES OF LOUISIANA, INC.		
	4141 VETERANS MEMORIAL BL [illegible] LA 70002		
MORTGAGOR:	JOANN SACCONA		
CO-MORTGAGOR:			
MAILING ADDRESS	4713 PALMYRA NEW ORLEANS LA 70119		

DATE OF MORTGAGE	NUMBER OF PAYMENTS	36
6/02/77	MONTHLY PAYMENT AMOUNT — FIRST	$ 90.00
FIRST PAYMENT DUE	OTHERS	$ [illegible]
7/02/77	AMOUNT FINANCED	$ 2205.60
FINAL PAYMENT DUE (MATURITY)		
6/02/80		
ANNUAL PERCENTAGE RATE		
14.00 %		
MAXIMUM LOAN ($ ONLY)	FINANCE CHARGE	$ 1254.40
$ 2020 NET	TOTAL OF PAYMENTS	$ 3460.00

Payments are due on the same day of each succeeding month, beginning with the First Payment Due Date. The final payment, in any case, is equal to the unpaid Amount Financed and accrued charges. EFFECTIVE DATE OF FINANCE CHARGE AND INSURANCE COVERAGE IS DATE FUNDS ARE DISBURSED.

KNOW ALL MEN BY THESE PRESENTS, that the Borrowers named above as Mortgagors, (which term shall also relate to the singular wherever appropriate), above the legal age of majority and residents of the parish and state aforesaid, own the property herein mortgaged, and that it has not been previously alienated, hypothecated, encumbered, or mortgaged to the prejudice of this Mortgagee, named above, except as hereinafter stated, and acknowledged that they are justly and directly indebted, in solido, unto the Mortgagee named above, of the parish and state aforesaid, in the Total of Payments stated above, the actual amount of a loan made to the above named Mortgagors and for the reimbursement whereof, and as evidence of said indebtedness have made and subscribed a certain LOAN AGREEMENT WITH PROVISIONS FOR REFINANCING, hereinafter referred to as "LOAN AGREEMENT" of even date herewith. Said Total of Payments are payable as described above /

Now, therefore, in order to secure the repayment of said indebtedness and the punctual payment of the said LOAN AGREEMENT and payments due thereon at maturity, and any renewals or extensions thereof, or any future loans made pursuant thereto, all future advances shall be payable by the Mortgagor upon demand of the Mortgagee, but subject to the continuing approval of the Mortgagors' credit by the Mortgagee or any other obligations which said Mortgagor may owe said Mortgagee, whether due or to become due, or whether now existing or hereafter contracted, together with all interest, attorney's fees, and insurance premiums, which said Mortgagee or subsequent holders of said note shall incur or pay in the event of non-payment of said LOAN AGREEMENT, or any of its installments, said Mortgagors agree that the hereinafter described property (see Schedule A) is and remains specially mortgaged and hypothecated in favor of the Mortgagee above named and of any and all future holders of said LOAN AGREEMENT.

The said property to remain mortgaged, affected and hypothecated until the full and final payment of all sums secured hereby, as aforesaid, and Mortgagors do by these presents hereby bind and obligate themselves, their heirs and assigns, not to sell, alienate, deteriorate nor to encumber the said property herein mortgaged to the prejudice of this Mortgage, nor to remove said property out of this parish without the written consent of said Mortgagee first obtained

The Mortgagors agree to waive notice of seizure by the sheriff, constable or justice of the peace, the three (3) day's period provided by Art. 2331 of the Louisiana Code of Civil Procedure; the demand for payment provided by Art. 2639 of said code; and benefit of appraisal before sale, if any be held. Said Mortgagors expressly agree to the immediate seizure of the property described below in the event of issuance of a writ of execution.

The Mortgagors hereby expressly waive, as to the debt secured hereby and as to the property herein mortgaged, all personal property exemptions, the homestead exemption, and any and all exemptions permitted by the law to be waived.

SCHEDULE "A"

RECORDED IN THE MORTGAGE OFFICE
BOOK 2301 FOL. NO. 249
NEW ORLEANS, LA. June 10, 1977

[redacted]

(a) ☐ Motor Vehicle(s) Together with all Tires, Batteries, Radios, Heaters, Equipment and Accessories now or hereafter attached thereto;

	YEAR MODEL	MAKE	BODY TYPE	SERIAL NO
1				
2				

(b) ☒ Certain chattels, including household goods, now located at the address of Mortgagors indicated above to wit:

- Westinghouse gold refrigerator 1 - GE White range
- Chippendale dining room table 6 - chairs green brocade seats 1 - Double door
ffet 1 - Chippendale brown couch 1 - Gold chair 1- Brown chair
- Maprle top coffee table 1 - Chippendale end table 1 - Mah. end table 1 - Porcelain lamp
- Cher. lamp 1 - 23" Zenith portable t.v. 1 - GE stero 2 - speakers and turntable
- King size bed, 1 - pecan wood chest 1 - Triple dresser mirror 1 - Cedar wood chest
- GE Canister vacuum cleaner 2 Singer /w/cab. sewing machine

and in addition (thereto all other goods and chattels of like nature and all other furniture, fixtures, carpets, rugs, clocks, fittings, linens, china, crockery, cutlery, utensils, silverware) musical instruments and household goods hereafter to be acquired by Mortgagors or either of them, and kept or used in or about the said premises or commingled with or substituted for any property herein mentioned, said property now being and remaining in the Mortgagors' possession.

Thus Done and Passed at 4141 Veterans Blvd. in the Parish of Jefferson, State of Louisiana, on this 9th day of June, A. D. 19 77, in the presence of Deborah Hamilton (Witness) and Clara Peterson (Witness), two competent witnesses, who sign these presents with appearers after due reading of the whole.

Deborah Hamilton (Witness) Deborah Hamilton
Clara Peterson (Witness) Clara Peterson

JoAnn Sacona Mortgagor
Mortgagor

STATE OF LOUISIANA; PARISH OF Jefferson

BE IT KNOWN that on this day before me, a Notary Public, personally came and appeared Deborah Hamilton, who, being by me first duly sworn, did depose and say:

That he is Deborah Hamilton, one of the subscribing witnesses, or Mortgagee, in the above and foregoing act of collateral chattel mortgage, and that said act of collateral chattel mortgage was signed in the presence of affiant and the other parties thereto.

(If the Mortgagor executes the affidavit the following paragraph should be used)

That he is ..... the Mortgagor in the above and foregoing act of collateral chattel mortgage, and that he signed and executed such act of collateral chattel mortgage in the presence of the subscribing witnesses and the other parties thereto.

Sworn to and subscribed before me this

9th day of June, 19 77

Deborah Hamilton

4247

A-10 EXHIBIT 3 DISCLOSURE STATEMENT

FEDERAL DISCLOSURE STATEMENT IN COMPLIANCE WITH FEDERAL LAW AND STATEMENT OF LOAN FOR LOUISIANA CONSUMER CREDIT LAW

BRANCH AND ACCOUNT IDENTIFICATION	17425	ACCOUNT NO	FILE NO
	082	38506343	000241

LENDER: AVCO FINANCIAL SERVICES OF LOUISIANA, INC.
4141 VETERANS MEMORIAL BL
METAIRIE LA 070002

BORROWER: JOANN SAGONA
CO BORROWER:
MAILING ADDRESS: 4713 PALMYRA
NEW ORLEANS LA 70119

[X] ORIGINAL LOAN This Statement of Loan is made and in connection with a Loan Agreement between the parties hereto on the date set forth herein.

[ ] RENEWAL LOAN _____ the date of an original Loan Agreement under which this Statement of Loan is entered, the terms and conditions of which remain in full force and effect except as amended by this Statement which becomes a part of said Agreement as though fully set forth therein.

DATE OF LOAN 06/09/77	NUMBER OF PAYMENTS		36
FIRST PAYMENT DUE 07/09/77	MONTHLY PAYMENT AMOUNT	FIRST	$ 98.00
		OTHERS	$ 98.00
FINAL PAYMENT DUE (MATURITY) 06/09/80	AMOUNT FINANCED		$ 2269.60
ANNUAL PERCENTAGE RATE 31.32			
MAXIMUM LOAN ($ ONLY) $ 2000 NET	FINANCE CHARGE *		$ 1258.40
	TOTAL OF PAYMENTS		$ 3528.00

Payments are due on the same day of each succeeding month, beginning with the First Payment Due Date. The final payment, in any case, is equal to the unpaid Amount Financed and accrued charges. EFFECTIVE DATE OF FINANCE CHARGE AND INSURANCE COVERAGE IS DATE FUNDS ARE DISBURSED.

BORROWER AUTHORIZES LENDER AS AGENT TO MAKE DISBURSEMENTS INDICATED BELOW.

Paid To	Amount
HENS DEN	$ 350.74
THE CRATE	$ 274.17
AUDUBON ACCEPTANCE	$ 406.00
METAIRIE	$ 129.28
PAILET & PENADO	$ 116.46
	$ .00
TOTAL	

PRIOR ACCOUNT(S)	SALES	LOAN
ACCOUNT NUMBER(S)	34114331	0
GROSS BALANCE OWED	$ 365.29	$ .00
Refund Charges	$ .00	$ .00
Refund Property Insurance	$ .00	$ .00
Refund Credit Life Ins	$ .00	$ .00
Refund Disability Ins	$ .00	$ .00
Accrued Default Chrgs/Int	$ .00	
NET BALANCE PRIOR ACCOUNT(S)	SALES →	$ 365.29
	LOAN →	$ .00
ACCRUED DEFAULT CHARGES LOAN		$ 1276.65

PROPERTY INSURANCE, if placed in connection with this loan, may be obtained by Borrower from any person of his choice. The cost of property insurance, if obtained through Lender, is indicated by the premium charge opposite the description of the coverage(s).

CREDIT INSURANCE FOR TERM OF LOAN	SINGLE	Life Decreasing Term		$ 105.84
	Credit Disability			$ 134.06
POLICY NUMBER 1148183	COVERAGE AMOUNT $ 2000.00	TERM 36 MONTHS		$ 120.00

PROPERTY INSURANCE FIRE & EXTENDED COVERAGES ON HOUSEHOLD CONTENTS

This loan is SECURED by

[X] Collateral Chattel Mortgage dated, 6/9/77, on:

[ ] Motor Vehicle(s)

	YEAR MODEL	MAKE	BODY TYPE	SERIAL NO
1				
2				

[X] If checked at left, household goods, furniture, appliances and other consumer goods as more particularly described in the Collateral Chattel Mortgage, a copy of which has or will be given to the Borrower(s).

[ ] Other _____

Property Insurance refunds, if Property Insurance has been obtained in connection with this loan are covered by the Loan Agreement.

THE ABOVE SECURITY WILL SECURE FUTURE OR OTHER INDEBTEDNESS AND WILL COVER AFTER-ACQUIRED PROPERTY.

[ ] This loan is UNSECURED.

FILING and/or RECORDING FEE			$ 2.00
TRANSFER and/or TITLE FEE			$ .00
(0 Days) Accrued Interest Prior Loan			$ .00
Total Disbursements other than cash or check to Borrower			$ 2003.84
FUNDS DISBURSED TO BORROWER(S)	By Check		$ 265.76
	By Cash		$ .00
AMOUNT FINANCED			$ 2269.60
* FINANCE CHARGE (A) Interest		$ 1258.40	
(B) Requested Extension (0 Days)		$ .00	
(C) TOTAL A + B		$ 1258.40	
(D) Notary Fee (Collateral Chattel Mortgage Only)		$ .00	
TOTAL OF FINANCE CHARGES C + D			$ 1258.40
TOTAL OF PAYMENTS			$ 3528.00

When this obligation is paid-in-full, there will be a fee for releasing the security interest herein. Fee charge is presently as follows:
☐ Release of Collateral Chattel Mortgage $_____
☐ Releasing Lien on Motor Vehicle $ _____
The foregoing fees are subject to change beyond the control of Lender.

REBATE FOR PREPAYMENT IN FULL – If this loan is prepaid in full prior to the final payment date, by any means, the unearned portion of the Finance Charge, excluding any notarization fee, shall be refunded by the Rule of 78's. However, if this loan is prepaid prior to the expiration of one half of the originally scheduled term, an acquisition fee of $25.00 will be deducted from the Finance Charge prior to computing the refund. When the amount of the refund is less than $1.00, no refund will be made. A refund computed under the Rule of 78's may be less than a refund computed on an interest-bearing basis for the remaining term under the contract.

DEFAULT CHARGE – If any payment is not paid within 10 days after its due date, Lender will assess a delinquency charge in an amount equal to $5.00 or 5% of the unpaid portion of the payment, whichever is less, or in lieu of such charge, the Lender may unilaterally grant a deferral and assess a deferral charge equal to the annual percentage rate shown above applied to the amount deferred for the period deferred. If two or more payments or parts thereof are in default for 10 days or more, the Lender may elect to convert the loan from a precomputed one to one in which the Finance Charge is based upon unpaid balances. In this event, Lender will make a rebate of the unearned portion of the Finance Charge on the same basis as if the loan were prepaid in full as of the maturity date of a delinquent installment, except that no acquisition charge will be made, and thereafter will compute the Finance Charge on an interest-bearing basis at the rates permitted by the Louisiana Consumer Credit Law until paid in full, except that one year after the original maturity date, the rate will be reduced to 8% per annum.

ACCELERATION – In the event of any default, including a default in the payment of any installment due, under the loan agreement or collateral chattel mortgage, if applicable, Lender has the right to declare due and payable the full unpaid balance and to bring a legal action to recover such balance, after giving the rebate provided for above for prepayment in full, but without deduction from the Finance Charge of the acquisition fee, such rebate to be computed as of the date suit is filed. Lender also has the right to proceed against the collateral and to bring an action to recover any deficiency remaining after disposition of the collateral and application of the proceeds as required by law. Borrower will be required to pay Lender's reasonable attorney's fees in the event suit is filed, not to exceed 25% of the unpaid balance after default.

I/WE HEREBY AUTHORIZE AVCO FINANCIAL SERVICES TO SEND MERCHANDISING OFFERINGS, ADVERTISING MATTER OR PHONE FOR ADVERTISING PURPOSES.

CREDIT LIFE AND/OR CREDIT DISABILITY INSURANCE IS NOT REQUIRED TO OBTAIN THIS LOAN OR ANY RENEWAL LOAN.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT WITH A REPRESENTATIVE LOAN SCHEDULE SHOWN ON THE REVERSE SIDE AND A COPY OF THE VOLUNTARY CREDIT INSURANCE AUTHORIZATION.

NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION

JoAnn Sagona
BORROWER

BORROWER

SIGNATURE ON SPECIAL CHECK ENDORSEMENT IS IN LIEU OF SIGNATURE ACKNOWLEDGEMENT HERE

84-44

No. .....

Office - Supreme Court, U.S.
FILED
JUL 26 1984
ALEXANDER L. STEVAS
CLERK

In The
Supreme Court of the United States
October Term, 1984

JOANN SAGONA, INDIVIDUALLY AND FOR ALL OTHERS SIMILARLY SITUATED,

Petitioner,

vs.

AVCO FINANCIAL SERVICES OF LOUISIANA, INC. AND ITS PARENT NOW UNKNOWN AND THEREFORE UNNAMED,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Herschel C. Adcock
Adcock & Dupree
821 Main Street
Post Office Box 3037
Baton Rouge, Louisiana 70821
Telephone: (504) 383-5276

Attorney for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Pages
Response	1
Conclusion	5

RULES CITED

12 CFR 226.18 (old regulation)	2
12 CFR 226.18, Comment 18(i) (new regulation)	2
12 CFR 226.8(b)(3)	4, 5

No. .....

—o—

In The

Supreme Court of the United States

October Term, 1984

—o—

JOANN SAGONA, INDIVIDUALLY AND FOR ALL OTHERS SIMILARLY SITUATED,

Petitioner,

vs.

AVCO FINANCIAL SERVICES OF LOUISIANA, INC. AND ITS PARENT NOW UNKNOWN AND THEREFORE UNNAMED,

Respondent.

—o—

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

—o—

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

—o—

RESPONSE

A.

There is no conflict among the decision of the United States District Court for the Eastern District of Louisiana, the decision of the United States Court of Appeals for the Fifth Circuit, and

the Federal Reserve Board regulations both under the old and new Regulation Z that requires a lender to disclose the "payable on demand" feature of a credit transaction.

Sagona sets forth as the reason for granting a writ by this Honorable Court, the decision of the court below conflicts with regulations of the Federal Reserve. Sagona argues that both under the old and new Regulation Z, the Federal Reserve Board made it a required disclosure to disclose a "payable on demand" clause whether same was contained in the note or in the mortgage (12 CFR 226.18, old regulation) and Federal Reserve Board Official Staff Commentary, 12 CFR 226.18, Comment 18(i) (new regulation).

A study of the judgments provided in the appendix of Sagona's petition reveals that said judgments did not result from an interpretation of Regulation Z either old or new. The judgments were the result of an interpretation of the chattel mortgage document as opposed to an interpretation of Regulation Z. As such, there is no conflict between the Federal Reserve Board Regulation and the lower court decisions. This point is well illustrated by the following quote from the decision of the United States District Court, Eastern District of Louisiana, found in Appendix C, page A-7 of the Sagona's petition for writ of certiorari:

> "A reading of the chattel mortgage document reveals that the obligation is payable in installments becoming due on demand only in the event of default. Moreover, the mortgage document is an accessory obligation designed to secure the obligation set forth in the loan agreement. It cannot, by itself, convert the agreement between the parties to a demand loan.

Accordingly, since I find the obligation is payable in installments, disclosure pursuant to Regulation Z is not necessary."

B.

The documents signed by Sagona contained no "payment on demand" clause that required disclosure.

This matter has come before this Honorable Court as one of the last cases to be decided under the old Regulation Z. In deciding this case, the Court should consider the purpose behind both the regulation as passed in 1968 and as it has been amended. The purpose of the legislation and regulation is to enlighten the consumer, not to further confuse him.

With this in mind, let us consider Sagona's argument. The documents signed by Sagona, attached to the petition for writ of certiorari as Exhibits 1-3, provided that payment on demand is made only in the event of default. Sagona's basis for an argument that this is a demand loan is found in language in the collateral chattel mortgage which says that sum shall be paid upon demand of mortgage. What Sagona failed to do was read the entire sentence set forth in the mortgage. This sentence provides:

"Now, therefore, in order to secure the repayment of said indebtedness and the punctual payment of the said LOAN AGREEMENT and payments due thereon at maturity and any renewals or extensions thereof, of any future loans made pursuant thereto, all future advances shall be payable by the Mortgagor upon demand of the Mortgagee, but subject to the continuing approval of the Mortgagors' credit by the Mortgagee or any other obligations which said Mortgagor may owe said Mortgagee, whether due or to become due, or whether now existing or hereafter

> contracted, together with all interest, attorney's fees and insurance premiums, which said Mortgagee or subsequent holders of said note shall incur or pay in the event of non-payment of said LOAN AGREEMENT, or any of its installments, said Mortgagors agree that the hereinafter described property (see Schedule A) is and remains specially mortgaged and hypothecated in favor of the Mortgagee above named and of any and all future holders of said LOAN AGREEMENT."

This entire sentence taken in context with the mortgage clearly reveals that this mortgage secures the obligations of the debtor set forth in the loan agreement. The mortgage itself does not convert the arrangement between Sagona and Avco to a demand loan.

Even if we assume for argument's sake only, that the language Sagona refers to in the mortgage does state that the obligation is payable upon demand, the argument still lacks merit. A mortgage is merely an accessory agreement and is not the primary obligation, a point made by the District Court in making its decision. Therefore, to determine whether or not this is a demand loan in the context of 12 CFR 226.8(b)(3), one must look to the primary obligation, namely, the loan agreement. Paragraph 4 of the loan agreement clearly states:

> "I promise to pay to you or your order . . . the *total of payments and of each succeeding loan made pursuant to this agreement in consecutive monthly payments, on the dates, in the amounts, for the term and in the manner set forth* in the respective statement of loans executed in connection with said loans." (emphasis added)

In conclusion, Avco submits that the transaction before this court is not a demand loan and therefore the de-

mand loan disclosure required by 12 CFR 226.8(b)(3) is not necessary in the instant case. The only demand feature contained in this Agreement is in the event of a default by the debtor.

CONCLUSION

C.

Respondent submits that the United States District Court for the Eastern District of Louisiana and the United States Fifth Circuit Court of Appeals were correct in their interpretation of the contract involved. There is no conflict with the Federal Reserve Regulation and, as a matter of fact, the decision is completely harmonious with the regulation.

RESPECTFULLY SUBMITTED this the 25th day of July, 1984.

AVCO FINANCIAL SERVICES
OF LOUISIANA, INC.

By: HERSCHEL C. ADCOCK

HERSCHEL C. ADCOCK
ADCOCK & DUPREE
821 Main Street
Post Office Box 3037
Baton Rouge, Louisiana 70821
Telephone: (504) 383-5276

(3)

No. 84-44

Office-Supreme Court, U.S.
FILED
AUG 20 1984
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

October Term, 1984

JOANN SAGONA, INDIVIDUALLY AND FOR ALL OTHERS SIMILARLY SITUATED,

Petitioner,

vs.

AVCO FINANCIAL SERVICES OF LOUISIANA, INC. AND ITS PARENT NOW UNKNOWN AND THEREFORE UNNAMED,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

RULE 28.1 STATEMENT

HERSCHEL C. ADCOCK
ADCOCK & DUPREE
821 Main Street
Post Office Box 3037
Baton Rouge, Louisiana 70821
Telephone: (504) 383-5276

Attorney for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

BEST AVAILABLE COPY

In compliance with Rule 28 of the United States Supreme Court Rules, the following is a list of all parent companies, subsidiaries and affiliates of Avco Financial Services of Louisiana, Inc.:

Avco Financial Services Quebec Limited
Avco Financial Services Canada Limited
Avco Financial Services Limited
Red Dragon Securities Limited
Avco Financial Services of Nevada, Inc.
Avco Financial Services Limited-Services Financiers Avco Limitee
Avco Financial Services of Japan, Inc.
Avco Financial Services LTD.
Avco Financial Services of Cheyenne, Inc.
Avco Financial Services of Wisconsin, Inc.
Avco Financial Services of Wheeling, Inc.
Avco Industrial Loan Company
Avco Financial Services of Washington, Inc.
Avco Financial Services of Madison Heights, Inc.
Avco Financial Services of Barre, Inc.
Avco Thrift of Utah
Avco Financial Services of Utah, Inc.
Avco Financial Services of Dallas, Inc.
Avco Financial Services of Tennessee, Inc.
Avco Financial Services of South Dakota, Inc.
Avco Financial Services of Spartanburg, Inc.
Avco Loan and Investment Company
Avco Financial Services of Rhode Island, Inc.
Avco Financial Services of Santurce, Inc.
Avco Financial Services of San Sabastion, Inc.
Avco Financial Services Consumer Discount Company One
Avco Financial Services of Oregon, Inc.
Avco Financial Services of Oklahoma, Inc.
Avco Financial Services of Ohio, Inc.
Avco Financial Services Loan, Inc.
Avco Financial Services of North Dakota, Inc.
Avco Mortgage and Acceptance Corporation
Avco Financial Services of Fayetteville, Inc.
Avco Installment Sales Company, Inc.
Avco Financial Services of New York, Inc.

Avco Financial Services of New Mexico, Inc.
Avco Financial Services of Bernalillo, Inc.
Avco Financial Services of New Hampshire, Inc.
Avco Mortgage Corporation
Avco Financial Services of Omaha, Inc.
Avco Financial Services of Nebraska, Inc.
Avco Financial Services International, Inc.
Avco Financial Services of Billings One, Inc.
Avco Financial Services of Rolla, Inc.
Avco Financial Services of Missouri, Inc.
Avco Financial Services of Mississippi, Inc.
Avco Financial Services Three, Inc.
Avco Financial Services of Minneapolis, Inc.
The Avco Financial Services Trust
Avco Financial Services of Maryland, Inc.
Avco Financial Services of Glen Burnie, Inc.
Avco Financial Services of Maine, Inc.
Avco Mortgage Corporation
Avco Financial Services Two, Inc.
Avco Financial Services of Kentucky, Inc.
Avco Financial Services of Topeka, Inc.
Avco Financial Services One, Inc.
Avco Financial Services of Wapello County, Inc.
Avco Financial Services of Storm Lake, Inc.
Avco Financial Services of Mt. Pleasant, Inc.
Avco Financial Services of Mason City, Inc.
Avco Financial Services of Keokuk, Inc.
Avco Financial Services of Iowa, Inc.
Avco Financial Services of Denison, Inc.
Avco Loan and Investment Company
Five Avco Financial Services, Inc.
Avco Insurance Agency of Illinois, Inc.
Avco Financial Services of Idaho Falls, Inc.
Avco Financial Services One, Inc.
Avco Financial Services of Hawaii, Inc.
Avco Financial Services of Albany, Inc.
Avco Financial Services of the United States, Inc.
Avco Financial Services of Hollywood, Florida, Inc.
Avco Mortgage and Acceptance, Inc.
Avco Financial Services Two, Inc.

Avco Financial Services One, Inc.
Avco Financial Services of Wilmington, Inc.
Avco Financial Services of West Wilmington, Inc.
Avco Financial Services of Puerto Rico, Inc.
Avco Financial Services of North Wilmington, Inc.
Avco Financial Services of New Castle, Inc.
Avco Financial Services of Newark, Inc.
Avco Financial Services of Milford, Inc.
Avco Financial Services of Lansing, Inc.
Avco Financial Services of Indianapolis, Inc.
Avco Financial Services of Georgia, Inc.
Avco Financial Services of Florida, Inc.
Avco Financial Services of Dover, Inc.
Avco Financial Services Two, Inc.
Avco Financial Services of Connecticut, Inc.
Avco Westminster Industrial Bank
Avco Pueblo Industrial Bank
Avco Lakewood Industrial Bank
Avco Industrial Bank
Avco Grand Junction Industrial Bank
Avco Fort Collins Industrial Bank
Avco Financial Services of Colorado, Inc.
Avco Englewood Industrial Bank
Avco East Denver Industrial Bank
Avco East Colorado Springs Industrial Bank
Avco Craig Industrial Bank
Avco Colorado Springs Industrial Bank
Avco Colorado Industrial Bank
Avco Boulder Industrial Bank
Avco Aurora Industrial Bank
Avco Academy Industrial Bank
Avco Thrift
Avco Investment Corp.
Avco Financial Services Two, Inc.
Avco Insurance Services, Inc.
Avco Financial Services of Maricopa, Inc.
Avco Financial Services (One), Inc.
Avco Financial Services of Alabama, Inc.
Avco Financial Services of Louisiana, Inc.
Avco Financial Services, Inc.